

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6019 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Dr. AMRIT M PATEL

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR BHARAT J SHELAT for Petitioner

MR RL JANI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/08/96

ORAL JUDGMENT

Heard learned counsel for the parties. The petitioner who was holding the post of Assistant Professor of Radiology in B.J. Medical College, Ahmedabad, filed this writ petition before this Court challenging thereunder the order dated 29.11.83, under which his services were terminated with effect from 31.12.83.

2. This appointment was honorary appointment and the petitioner was getting some nominal amount as honorarium. The learned counsel for the petitioner makes a statement before this court that the petitioner has already left the job and has gone abroad. The dispute only remains of giving of the petitioner the amount of honorarium for the period from the date of termination of his services till he left the job. The order of termination has been stayed by this Court on 14th December 1983, i.e. earlier to coming into force of the order of termination. So the only dispute remains of giving the petitioner the amount of honorarium from 1st January 1984 till he left the services. During this period he worked under the interim relief which has been granted by this Court.

3. The petitioner joined the services as Assistant Professor, Radiology, on 1.4.78. On 29.8.83, his services were terminated. He filed Special Civil Application No.4484 of 1983 before this Court challenging thereunder the order of respondent dated 29.8.83 under which his services were terminated. This Court has protected the petitioner by grant of interim relief and he continued in services. The Special Civil Application No.4484 of 1983 was decided by this Court on 19th October 1983. The petitioner has withdrawn the petitioner as the counsel who appeared for respondent has given out that the impugned order of termination of his services would be withdrawn without prejudice to the course of action. On 29th November 1983, the order has been made terminating the services of the petitioner from 31st December 1983. In the order, the reason for termination of services of the petitioner has been given out that the petitioner does not possess requisite qualifications for the appointment on the post of Assistant Professor of Radiology. I have gone through the contents of the order dated 29th November 1983 and the reason has been given that the petitioner does not possess required post graduate degree, i.e. M.D. Radiology. It is the case of the petitioner that he possess diploma in Radiology which he has taken from U.K.. which is equivalent to the Post Graduate degree, i.e. M.D. Radiology. It has further been stated that reference of decision of Medical Council of India given in the impugned order is of no consequence because that was not the decision given regarding equivalence of diploma of the petitioner to the M.D. Radiology. It was some other diploma in connection with which said decision has been given. The learned counsel for the petitioner contended that the order dated 29th November 1983 has been passed without any notice or opportunity of hearing to the petitioner. The petitioner was appointed in the year 1978 and it is not the case of

respondents that regarding equivalence of his qualifications, any clarifications have been sought from Medical Council of India.

4. I find sufficient merits in the contentions made by the learned counsel for the petitioner that an opportunity of hearing should have been given to the petitioner. The termination of services in a manner in which it has been made is highly arbitrary. The petitioner should have been given a reasonable opportunity of hearing so that he could have made out his case that diploma which he possesses is equivalent to M.D. Radiology or he could have got some clarifications from the Medical Council of India. The termination on the ground that the petitioner do not possess required Post Graduate degree without hearing him is not justified as the petitioner has been given appointment on the basis of this qualification way back on 1.4.78.

5. In the result, this Special Civil Application succeeds and the same is allowed. The order dated 29th November 1983, terminating the services of the petitioner, is set aside. Rule is made absolute in aforesaid terms. The petitioner shall be entitled for all consequential benefits following therefrom of setting aside the order of termination of services of the petitioner. Rule is made absolute with no order as to costs.

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(sunil)